

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No: 172/Rjt/2019  
Assessment Year: 2013-14**

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| M/s. Shree Rajmoti Industries,<br>Bhavnagar Road,<br>Rajkot (Gujarat) | Vs | The DCIT,<br>Central Circle-2(1),<br>Rajkot<br><br>(Respondent) |
| PAN No: AAKFS6930M<br>(Appellant)                                     |    |   |

**Assessee Represented: Shri R. D. Lalchandani, A.R.  
Revenue Represented: Shri V.J. Boricha, Sr. D.R.**

Date of hearing : 31-07-2023  
Date of pronouncement : 27-09-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the appellate order dated 23-05-2019 passed by the Commissioner of Income Tax (Appeals)-2, Rajkot arising out of the Penalty order passed under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2013-14.

2. The brief facts of the case is that the assessee is a firm engaged in manufacturing and trading of edible oil and oil seeds. For the Assessment Year 2013-14, the assessee filed its Return of Income on 12-10-2013 admitting total income of Rs. 1,09,87,527/-. Assessment was completed making a disallowance the claim of deduction u/s. 10(34) namely dividend income of Rs. 10,31,750/- received by the assessee from Rajkot Nagrik Sahakari Bank Ltd.. The Assessing Officer also initiated penalty proceedings for furnishing inaccurate particulars of income.

2.1. On appeal against the quantum addition, the Ld. CIT(A) confirmed the same. It is thereafter the Assessing Officer proceeded with the levy of penalty by issuing a show cause notice dated 18-01-2018. In response, the assessee filed a detailed reply vide letter dated 05-02-2018 stating that the assessee has clearly mentioned that the dividend was received from Rajkot Nagrik Sahakari Bank Ltd. and therefore no inaccurate particulars in respect of dividend income have been filed by the assessee. The assessee further submitted that claim of exemption does not amount to furnishing inaccurate particulars and relied upon various case laws. The Ld. A.O. however not accepted the above explanation offered by the assessee and levied a minimum penalty of Rs. 3,18,810/- u/s. 271(1)(c) of the Act.

3. Aggrieved against the same, the assessee filed an appeal before Ld. CIT(A). The assessee reiterated the same submissions before the Lower Authorities and filed a detailed written submissions as follows:

*“....5. Since the information was given in the return, we submit that since no inaccurate particulars in respect of dividend income have been filed by*

us, and hence no penalty livable on us. We submit that claiming exemption does not amount to furnishing of inaccurate income particulars.

6. Reference is invited to decision of Supreme Court in the case of Reliance Petro Product Pvt Ltd. [332 I.T.R. 158]

"S. 271 (1) (C) penalty cannot be imposed even for making unsustainable claims".

(1) S.271 (1) (C) applies where the assesses "has concealed the particulars of his income furnished inaccurate particulars of such income". The present was not a case of concealment of the income. As regards the furnishing of inaccurate particulars, no information given in the return was found to be incorrect or inaccurate. The words "inaccurate particulars" mean that the details supplied in the Return are not accurate, not exact or correct, not according to truth or erroneous. In the absence of a finding by the AO that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false, there would be no question of inviting penalty u/s 271 (1) (C).

(ii) The argument of the revenue that "submitting an incorrect claim for expenditure would amount to giving inaccurate particulars of such income" is not correct. By no stretch of imagination can the making of an incorrect claim in law tantamount to furnishing inaccurate particulars. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. If the contention of the Revenue is accepted then in case of every Return where the claim made is not accepted by the AO for any reason, the assessee will invite penalty u/s 271 (1) (C). That is clearly not the intendment of the Legislature.

7. We further rely upon the following Judgments to submit that we have not violate the provisions of section 271(1)(c) of the Act.

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| 1 | <b>Bombay High Court in case of CIT vs. Rucha Engineers Pvt. Ltd. [2015-ITRV-HC-MuM025]</b> | has held that before proceeding to the Explanation below s. 271 and putting the responsibility on the assessee, it is necessary for the AO to first demonstrate that the assessee's explanation or conduct is not reasonable on human probabilities, or that it was in the nature of violating settled legal positions. If the explanation is not fanciful, |
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|   |   | <i>baseless or unacceptable, penalty cannot be levied.</i>  |
| 2 | <b><i>Delhi ITAT Bench in case of Poysha Goyal vs. ACIT[2015-ITRV-ITAT-DEL-012]</i></b>   | <i>has held that no penalty u/s 271(l)(c) could be imposed when all necessary facts were disclosed by the assessee as such it could not be said that the assessee has either concealed any income or furnished inaccurate particulars.</i>                                |
| 3 | <b><i>Madras High Court in case of CIT vs. JayarajTalkies (1999) 239 ITR 914 (Mad)</i></b>  | <i>has held that mere addition of income or surrender of income did not imply concealment of income where the assessee surrendered certain amount to assessment because it was unable to substantiate its claims with necessary vouchers</i>                              |
| 4 | <b><i>Supreme Court Hindustan Steel Ltd vs State Of Orissa on 4 August, 1969<br/>Equivalent citations: 1970 AIR 253, 1970 SCR (1) 753</i></b> | <i>has held that there would be no s. 271 (l)(c) penalty for a "bona fide/ inadvertent/ human error"</i>  |
| 5 | <b><i>T. Ashok Pai vs. CIT (2007) 161 Taxmann 340 (SC)</i></b>  | <i>held that a mere omission or negligence does not constitute a deliberate act suppression very [Concealment of truth].</i>  |
| 6 | <b><i>Bombay High Court in case of CIT vs. Bennett Coleman &amp; Co. Ltd [2013 ITRV-HCMUM-030]</i></b>  | <i>has held that penalty u/s 271(1)(c) cannot be imposed when there was no desire on part of assessee to hide or conceal the income but it was an inadvertent mistake on part of assessee and when there is only change of head of income no penalty could be imposed</i> |
| 7 | <b><i>Supreme Court Hindustan Steel Ltd vs State Of Orissa on 4 August, 1969<br/>Equivalent citations: 1970 AIR 253, 1970 SCR (1) 753</i></b> |   |

8. In view of submission made here in above, we request you to please direct the A.O. to delete the penalty u/s. 271(1)(c).

4. The Ld. CIT(A) after considering the above submissions of the assessee dismissed the appeal filed by the assessee and confirmed the penalty levied by the Assessing Officer observing as follows:

*".....Having considered facts and circumstances of the case I find it uncontroverted that Rajkot Nagrik Sahkari Bank is not domestic company and it*

*is not subject to dividend distribution tax. The provisions of section 10(34) are categorical that the income by way of dividend referred in section 155-0 is exempt. The assessee was therefore under obligation to ascertain whether Rajkot Nagrik Sahakari Bank was subject to dividend distribution tax stipulated in section 115-0. It is a fact which the assessee was required to ascertain before he claimed a dividend income exempt u/s 10(34). In these facts and circumstances of the case I am of the considered opinion that decision of Honable Supreme Court in the case of Reliance Petro Product Private Limited (supra) is not applicable to the case as the facts are clearly distinguishable. It is not a simple case of assessee making wrong claim and Assessing Officer denying it. In this case there is no doubt that Rajkot Nagrik Sahkari Bank is not subjected to dividend distribution tax and therefore provision of section 10(34) did not apply to assessee. Therefore making claim of exempt income is not merely a case of legal claim not have been sustainable under law but case of misrepresentation of facts and furnishing incorrect particulars of income.*

*The action of Assessing Officer therefore calls for no interference. The Penalty is confirmed. The ground of appeal is dismissed.”*

5. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

- 1. The Commissioner of Income Tax {Appeals} erred in confirming the levy of penalty under section 271(1) of the Act. The levy of penalty is not justified.*
- 2. Without prejudice to ground no 1, the levy of penalty @ Rs 3,18,310/- is too heavy arbitrary and not warranted by the facts of the case.*

6. Ld. Counsel Mr. R.D. Lalchandani appearing for the assessee submitted that in assessee's own case for the Assessment Year 2008-09 to 2012-13, similar disallowances were made, the A.O. namely dividend income received from Rajkot Nagrik Sahakari Bank Ltd., while doing regular assessment and reassessment proceedings. Though the Assessing Officer initiated penalty proceedings for furnishing inaccurate particulars for the Assessment Year 2011-12, however not levied penalty. For other assessment years, penalty proceedings were not even initiated. Thus the Ld. Counsel relying upon the case laws of Hon'ble Supreme Court and other Courts pleaded that the levy of penalty is

liable to be deleted since the assessee has not furnished inaccurate particulars of income.

7. Per contra, the Ld. CIT-DR Shri V.J. Boricha appearing for the Revenue supported the order passed by the Lower Authorities. The assessee made claim by misrepresentation of facts, which is clearly falls under the category of furnishing inaccurate particulars of income and therefore the penalty levied is sustainable in law.

8. We have given our thoughtful consideration and perused the materials available on record. It's clear from assessment and reassessment proceedings in the case of the assessee for earlier assessment years 2008-09 to 2012-13, the Ld. A.O. has not levied Penalty u/s. 271(1)(c) for furnishing inaccurate particulars of income on the very same issue of claim u/s. 10(34) on the dividend income received by the assessee. However only for the present A.Y. 2013-14, the Ld. A.O. levied penalty, which is inconsistent with that of the earlier assessment years. The Hon'ble Supreme Court of India in the case of Reliance Petroproducts Pvt. Ltd. has held the words "inaccurate particulars" mean that the details supplied in the Return are not accurate, not exact or correct, not according to truth or erroneous. In the absence of a finding by the AO, that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false, there would be no question of inviting penalty u/s 271(1)(c). Further the argument of the revenue that "submitting an incorrect claim for expenditure would amount to giving inaccurate particulars of such income" is not correct. By no stretch of imagination can the making of an incorrect claim in law, tantamount to furnishing inaccurate particulars. A mere making of

the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. If the contention of the Revenue is accepted then in case of every Return, where the claim made is not accepted by the AO for any reason, the assessee will invite penalty u/s 271 (1) (C). That is clearly no the intendment of the Legislature.

8.1. Following the above Supreme Court Judgment, the Jurisdictional High Court in the case of PCIT Vs. Intas Pharma Ltd. reported in [2022] 138 taxmann.com 474 (Gujarat) held as follows:

*“Section 271(1)(c), read with section 32, of the Income-tax Act, 1961 Penalty - For concealment of income (Disallowance of claim of depreciation) - Assessment year 2011-12 - Assessee claimed additional depreciation for plant and machinery under section 32(1)(iia) on strength of Tax Audit Report - Assessing Officer disallowed claim on ground that production had been started in current year by assessee and, therefore, it could not be said to have been already engaged in business of manufacturing He also levied penalty under section 271(1)(c) on ground of concealment of income - Tribunal reached to conclusion that merely because claim on merit was not granted, penalty could not be levied It held that disallowance of claim of depreciation could not give rise to any question of concealment of income Whether Tribunal was right in so holding - Held, yes [Para 13] [In favour of assessee]”*

8.2. The Bombay High Court in the case of PCIT Vs. Sesa Goa Ltd. reported in [2021] 132 taxmann.com 42 (Bombay) held as follows:

*“Section 271(1)(c) of the Income-tax Act, 1961 Penalty - For concealment of income (Disallowance of claim, effect of) - Assessee filed return declaring a total income - Assessing Officer noted that assessee made an incorrect claim of deduction under section 10B and levied a penalty under section 271(1)(c) - An erroneous claim simpliciter does not automatically attract a penalty and it is only when an erroneous claim is based on a deliberate misrepresentation of facts or deliberate suppression of relevant material facts that a penalty is imposed after deduction is denied - Whether since there was no error on part of assessee in claiming deduction, there was obviously no question of imposing any penalty upon assessee - Held, Yes [Para 7] [ in favour of assessee]”*

9. Respectfully following the above judicial precedents, we have no hesitation in deleting the penalty of Rs. 3,18,810/- levied u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income. Thus the ground raised by the Assessee is hereby allowed.

10. In the result, the appeal filed by the Assessee is hereby allowed.

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| Order pronounced in the open court on 27-09-2023 |
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**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 27/09/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट